REMARKS

Claims 1-85 are pending in the application. Claims 10-13, 15, 17-20, 22-25, 28-46, 57, 60-64, 66, 67, 69-71, 76, 77, 80, 81, 84, and 85 were withdrawn from consideration. Claims 1-9, 14, 16, 21, 26, 27, 47-56, 58, 59, 65, 68, 72-75, 78, 79, 82, and 83 stand rejected. By this communication, Applicants are amending claims 1, 8, 14, 27, 49, 55, 56, 59, and 78; and adding claim 86. Applicants request entry of this Amendment, and request reexamination and reconsideration in view of the remarks contained herein.

Before addressing the action on the merits, Applicants want to address the Office's withdrawal of various claims stating the Applicants' election was made without traverse. Applicants disagree with the Office's position, traverse the restrictions, and reserve the right to appeal the Office's position.

M.P.E.P. § 818.03 (a) is repeated below:

818.03(a) Reply Must Be Complete

> As shown by the first sentence of 37 C.F.R. 1.143, the traverse to a requirement must be complete as required by 37 C.F.R. 1.111(b) which reads in part: "In order to be entitled to reconsideration or further examination, the applicant or patent owner must reply to the Office action. The reply by the applicant or patent owner must be reduced to a writing which distinctly and specifically points out the supposed errors in the examiner's action and must reply to every ground of objection and rejection in the prior Office action. . . . The applicant's or patent owner's reply must appear throughout to be a bona fide attempt to advance the application or the reexamination proceeding to final action. . . ."
>
> **Under this rule, the applicant is required to specifically point out the reasons on which he or she bases his or her conclusions that a requirement to restrict is in error.** A mere broad allegation that the requirement is in error does not comply with the requirement of 37 CFR 1.111. Thus the required provisional election (see MPEP § 818.03(b)) becomes an election without traverse.

Applicants properly traversed the restriction and asserted that the examination of the claims can be made without serious burden on the Examiner. Therefore, Applicants have specifically pointed out the reason on which they base their conclusions that a requirement to restrict is in error. Accordingly, Applicants responded to the Restriction,

and request the Office to withdraw his position that the election was made without traverse.

Applicants amended claims 8, 14, 27, 49, 55, 56, and 59 to correct antecedent basis errors.

Claim 1 is repeated below for the Examiner's reference.

> 1. A commercial refrigeration system suitable for use in a supermarket, the commercial refrigeration system comprising:
> a compressor, a condenser, a valve, and an evaporator coil, all of which are in fluid communication;
> a fixture adapted to be cooled by the evaporator coil;
> a system controller operable to control operation of the refrigeration system;
> a subsystem controller in communication with the system controller, the subsystem controller being operable to monitor at least one parameter of a subsystem having at least one of the compressor, condenser, valve, and fixture, and being further operable to execute a command from the system controller to affect the operation of the subsystem; and
> wherein at least one of the compressor and condenser is located remotely from the fixture.

Claim 1 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over USPN 5460006 (Torimitsu) in view of USPN 5279458 (DeWolf). With regard to the Torimitsu reference the Office states, "Torimitsu discloses a commercial refrigeration system having compressor, condenser, valve, evaporator coil, fixture cooled by the evaporator coil, system controller 100 and a plurality of subsystem controller 10A-1, 10A-2 ... 10N-4 in digital communication with the system controller for transmitting set point data, detected data and control data." Page 2 of the pending Office action. With regard to the DeWolf reference the Office states, "DeWolf teaches the use of a central controller 12 in order to monitor and control a plurality of subsystems 16 over a communication network." Id. Based on the above statements and the general comment that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the system of Torimitsu such that it include the use of centralized control of subsystems in view of the teachings of DeWolf," the Office argues claim 1 (and seventeen other claims) are unpatentable in view of the cited prior

art. Applicants assert that the Office has not established a *prima facie* case of obviousness.

Applicants remind the Examiner, to establish a *prima facie* case of obviousness, three basic criteria must be met. *M.P.E.P.* § 706.02(j) and 2143.

> First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be both found in the prior art, not in applicants' disclosure.

Id.

First, Applicants assert that the references, either alone or combined, do not teach or suggest all the claim limitations of amended claim 1 (i.e., does not meet the third prong of the *prima facie* case). Neither the Torimitsu reference nor the DeWolf reference teaches or suggests a commercial refrigeration system suitable for use in a supermarket having, among the other limitations of claim 1, a compressor, a condenser, a valve, and an evaporator coil, all of which are in fluid communication; a fixture adapted to be cooled by the evaporator coil; and wherein at least one of the compressor and condenser is located remotely from the fixture. See the Torimitsu reference col. 2, line 66 to col. 3, line 14 and the DeWolf reference col. 2, lines 40-68. That is, both the Torimitsu and DeWolf references disclose networking a plurality of self-contained systems (i.e., the refrigeration systems 10-1 to 10-4 for Torimitsu and the PTACs 16 for DeWolf) to a central device (i.e., the signal receiver 10 for Torimitsu and control system 10 for DeWolf). Applicants' invention, on the other hand, is directed to networking a plurality of subsystem controllers of a commercial refrigeration system suitable for use in a supermarket to a system controller of the commercial refrigeration system. The amendments were included to clearly recite this distinguishing feature from the cited prior art. Accordingly, the Office's proposed combination does not establish a *prima facie* case of obviousness for amended claim 1, and amended claim 1 is allowable.

Before proceeding further, it is noted that the Office appears to argue that the Torimitsu reference discloses a system controller 100 that is in digital communication with a plurality of subsystem controllers 10A-1, 10A2 . . . 10N-4 for transmitting set point data, detected data, and control data between the system controller and the plurality of subsystem controllers. However, Applicants asset the Office is mischaracterizing the Torimitsu reference. Reference numbers 10A-1, 10A-2 . . . 10N-4 refer to stand-alone refrigeration devices and not to "subsystem controllers." Cooling controllers 17 are the closest controllers to "subsystem controllers". This distinction is important because the Torimitsu reference discloses a monitoring system for stand-alone food storage devices. More specifically, for the Torimitsu reference, the subsystem controllers (i.e., cooling controllers 17) are not operable to execute a command from the system controller (i.e., administrative computer 100) to affect operation of the subsystem.[1] Therefore, the Office has mischaracterized the Torimitsu reference in the pending action.

In addition to the above, Applicants assert that the Office has not established the other two prongs of the *prima facie* case of obviousness, and therefore has not met its duty with respect to the obviousness rejection. For example, Applicants assert there is no motivation in the cited prior art of record to combine the monitoring system for food storage devices, as taught in the Torimitsu reference, with the heating and air conditioning system for heating and cooling a multi-space building (e.g., a hotel), as taught in the DeWolf reference. Accordingly, claim 1 is allowable for reasons other than the failing of the cited prior art to teach each and every limitation of amended claim 1.

Claims 2-77 depend, either directly or indirectly, from claim 1, and consequently, include patentable subject matter for the reasons set forth above with respect to claim 1.

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[1] For the construction shown in Fig. 1, the signal receiver 10 only monitors signals from the apparatus 10-1 to 10-4, and the cooling controller 17 receives inputs from only the setting device 14 and the sensors 15 and 16. Figs. 3 and 4 disclose multiple signal receivers in communication with an administrative computer/center. Similar to Fig. 2, the signal receiver 10 only monitors signals from the apparatus 10A-1 to 10A-4 and the cooling controller 17 receives inputs from only the setting device 14 and the sensors 15 and 16. Fig. 6 discloses a construction where the signal receiver 10 includes a control signal output circuit that directly controls the evaporator 12 of the storage cabinet 11. Additionally, the signal receiver 10 monitors signals from the apparatus 10-1 to 10-4. The "cooling controller" 17 does not receive a fixture control signal over the communication channel and does not control the evaporator 12 or the storage cabinet 11 (i.e., it only provides a local alarm).

Therefore, claims 2-77 are allowable. Further, Applicants assert claims 2-77 specify additional limitations that, in combination with claim 1, are believed to be patentable.

Applicants traverse the rejection of claims 5-8, 16, 21, 26, 27, 47, 50-53, 65, 68, 72, 73, and 75 because the Office has not clearly set forth its reasoning for rejecting these claims. By way of example, claim 26 recites that the subsystem controller executes a command from the system controller to perform one of an anti-sweat function associated with the fixture, a defrost cycle associated with the fixture, and a light control associated with the fixture. The Office has not established a *prima facie* case of obviousness for claim 26. Rather, the Office only summarily rejected claim 26 when asserting its position with respect to claim 1. This reasoning also applies to the other claims that depend from claim 1. Accordingly, Applicants traverse the rejection of claims 5-8, 16, 21, 26, 27, 47, 50-53, 65, 68, 72, 73, and 75.

It is also noted that the Office improperly rejected claim 50, which depends from claim 49 and not from claim 1.

Claim 74 stands rejected as being unpatentable over the Torimitsu reference in view of the DeWolf reference, and further in view of USPN 5,950709 (Krueger). Applicants traverse the rejection because the Office has not set forth a *prima facie* case of obviousness for claim 74. For example, the Office has not provided any suggestion or motivation as to why a person of ordinary skill in the art would combine the teachings of the Krueger reference with the teachings of the Torimitsu and DeWolf references to result in the claimed invention. Accordingly, claim 74 is allowable.

Claims 2, 9, 48, and 54 stand rejected as being unpatentable over the Torimitsu reference in view of the DeWolf reference, and further in view of USPN 5,460,006 (Douglass). Applicants traverse the rejection because the Office has not set forth a *prima facie* case of obviousness. For example, the Office has not provided any suggestion or motivation as to why a person of ordinary skill in the art would combine the teachings of the Douglass reference with the teachings of the Torimitsu and DeWolf references to result in the claimed invention. Accordingly, claims 2, 9, 48, and 54 are allowable.

Claim 4 stands rejected as being unpatentable over the Torimitsu reference in view of the DeWolf reference, and further in view of USPN 5,279,458 (Rein). Applicants traverse the rejection because the Office has not set forth a *prima facie* case of obviousness. For example, the Office has not provided any suggestion or motivation as to why a person of ordinary skill in the art would combine the teachings of the Rein reference with the teachings of the Torimitsu and DeWolf references to result in the claimed invention. Accordingly, claim 4 is allowable.

Claims 3, 14, 49, 55, 56, 58, and 59 are rejected as being unpatentable over the Torimitsu reference in view of the DeWolf reference, and further in view of Official notice. The Office appears to acknowledge that the Torimitsu and DeWolf references, either alone or in combination, do not teach or suggest all of the limitations of claims 3, 14, 49, 55, 56, 58, and 59. Instead, the Office took Official Notice that the control of compressors, condensers, and pressure regulation valves are all well known and conventional in the refrigeration system art. Applicants traverse the Office's use of Official Notice and the rejection. Applicants remind the Examiner that 3, 14, 49, 55, 56, 58, and 59 depend from at least claim 1, and therefore, the limitations of claims 3, 14, 49, 55, 56, 58, and 59 cannot be read in a vacuum. The mere fact that the control of compressors, condensers, and pressure regulation valves are all well known does not result in claims 3, 14, 49, 55, 56, 58, and 59 being unpatentable over the Torimitsu reference in view of the DeWolf reference and further in view of Official Notice. Applicants remind the Office that "determination of obviousness can not be based on the hindsight combination of components selectively culled from the prior art to fit the parameters of the patented invention." *ATD Corp. v. Lydall, Inc.*, 159 F.3d 534, 546 (Fed. Cir. 1998). The initial burden is on the Office to provide some suggestion of the desirability of doing what the inventors have done. *M.P.E.P.* § 706.02(j); *see also In re Rougget*, 149 F.3d 1350, 1355 (Fed. Cir. 1998) ("To reject claims in an application under section 103, an examiner must show an unrebutted *prima facie* case of obviousness . . .. In the absence of a proper *prima facie* case of obviousness, an applicant who complies with the other statutory requirements is entitled to a patent.") Since the Office has not established a *prima facie* case of obviousness, claims 3, 14, 49, 55, 56, 58, and 59 are allowable.

Claim 78 is repeated below for the Examiner's reference.

78. A method of installing an aspect of a commercial refrigeration system comprising

a compressor, a condenser, a valve, and an evaporator coil, all of which are in fluid communication,

a fixture adapted to be cooled by the evaporator coil,

a system controller operable to control operation of the refrigeration system including providing a command, and

a subsystem controller in communication with the system controller, the subsystem controller being operable to control operation of a subsystem of the refrigeration system in response to the command, the subsystem including at least one of the compressor, condenser, valve, and fixture, the method comprising:

installing the system controller at a first location;

installing the subsystem controller at a second location;

connecting a source of electrical power to the system controller;

installing a power and communication line between the system controller and the subsystem controller;

during operation of the refrigeration system,

communicating the command from the system controller to the subsystem controller over the power and communication line;

transmitting power from the system controller to the subsystem over the power and communication line concurrently with communicating the command; and

transmitting power from the system controller to the subsystem over the power and communication line nonconcurrently with communicating the command.

Claim 78 stands rejected as being unpatentable over the Torimitsu reference in view of the DeWolf reference, and further in view of the Douglass reference. Applicants assert that neither the Torimitsu reference nor the DeWolf reference teaches or suggests a method of installing an aspect of a commercial refrigeration system comprising the acts of, among other acts, communicating the command from the system controller to the subsystem controller over the power and communication line, transmitting power from the system controller to the subsystem over the power and communication line concurrently with communicating the command, and transmitting power from the system controller to the subsystem over the power and communication line nonconcurrently with communicating the command. Rather, the Office would appear to argue that the Douglass reference cures the deficiencies of the Torimitsu and DeWolf references.

Applicants assert that the Douglass reference does not teach or suggest the just-recited limitations. Instead, the cited text by the Office recites a parasitically powered electronic device, which is powered only when the data goes to a high voltage. However, amended claim 78 recites transmitting power concurrently and nonconcurrently with the command. Accordingly, the Douglass reference does not cure the deficiencies of the Torimitsu reference, and claim 78 is allowable.

Applicants also note that the Office has not set forth a *prima facie* case of obviousness with respect to claim 78. For example, the Office has not provided any suggestion or motivation as to why a person of ordinary skill in the art would combine the teaching of the Douglass reference with the teachings of the Torimitsu and DeWolf references to result in the claimed invention. Accordingly, claim 78 is allowable for this reason.

Claims 79-86 depend, either directly or indirectly, from claim 78, and consequently, include patentable subject matter for the reasons set forth above with respect to claim 78. Therefore, claims 79-86 are allowable. Further, Applicants assert claims 79-86 specify additional limitations that, in combination with claim 78, are believed to be patentable.

Applicants traverse the rejection of claims 79, 82, and 83 because the Office has not clearly set forth its reasoning for rejecting these claims. By way of example, claim 79 recites that no separate power line for the subsystem controller must be wired upon installation of the commercial refrigeration system. The Office has not established a *prima facie* case of obviousness for claim 79. Rather, the Office only summarily rejected claim 79 when asserting its position with respect to claim 78. This reasoning also applies to the other claims that depend from claim 78. Accordingly, Applicants traverse the rejection of claims 79, 82, and 83.

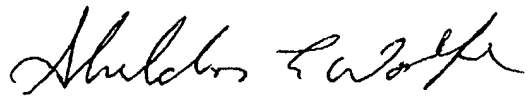
Applicants also traverse the rejection of claims 79, 82, and 83 because the Office has not set forth a *prima facie* case of obviousness for these claims. For example, the Office has not provided any suggestion or motivation as to why a person of ordinary skill in the art would combine the teachings of the Douglass reference with the teachings of

the Torimitsu and DeWolf references to result in the claimed invention. Accordingly, claims 79, 82, and 83 are allowable for this reason.

CONCLUSION

Entry of the Amendment and allowance of claims 1-86 are respectfully requested. The undersigned is available during normal business hours if a telephone conversation would be helpful to advance prosecution in this application.

Respectfully submitted,



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